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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/936,527	09/14/2001	Karl Reuter	033265-003	4392
21839	7590	04/21/2004	EXAMINER	
BURNS DOANE SWECKER & MATHIS L L P			LISH, PETER J	
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ALEXANDRIA, VA 22313-1404			PAPER NUMBER	

1754

DATE MAILED: 04/21/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/936,527	Applicant(s) REUTER, KARL	
	Examiner Peter J Lish	Art Unit 1754	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 January 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

Applicant's arguments filed 1/28/04 have been fully considered but they are not persuasive. Applicant argues, with respect to the rejection over WO '644 and US '259, that the substances that are added to the emulsion-filtrate of the references are of the type that crystallize out, wherein there is no buildup of impurities. Rather the references teach that the impurities remain at a constant concentration in the emulsion throughout the repetition of steps (a-e).

It is noted that the features upon which applicant relies, no buildup of impurities in the emulsion throughout the repetition of steps a)-e), are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Rather the claim states that in step e) the level of impurities does not build up in the emulsion. This limitation, however, as previously held by the examiner, is based on the false assumption that the crystal products are 100% pure and that no impurities are removed from the emulsion during the crystallization. Examiner holds that during the addition of impure substance into the emulsion filtrate (such as that occurring in step e), the level of impurities will increase, or build up.

Applicant argues, with respect to the rejection over Davey et al. in view of Hurlock et al., that Hurlock is a specific process involving a vacuum evaporation method of crystallization rather than an emulsion method of crystallization, and that the transfer of the teaching of Hurlock to an emulsion crystallization process, such as that taught by Davey, would not be obvious to one of ordinary skill in the art because of the various differences between the two specific processes.

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However, both the process of Davey et al. and the process of Hurlock et al. are drawn toward the purification of a material by selective crystallization. In the purification process of Hurlock, it is taught that the recycle of the mother liquor and the wash liquor through the crystallization process numerous times, along with the addition of new impure material, results in a higher degree of separation and purification. This teaching is transferable to any type of purification by selective crystallization, as it is not affected by the specifics of the method. Therefore, it would have been obvious to one of ordinary skill at the time of invention to apply the wash and recycle step of Hurlock et al. on any purification process using selective crystallization, including those which use emulsion crystallization such as Davey et al., in order to achieve a higher degree of separation and purification.

Claim Rejections - 35 USC § 102

Claims 1-3, 5-6, and 8-10 are rejected under 35 U.S.C. 102(b) as being anticipated by WO 97/32644.

The rejection of the previous office action is maintained in its entirety and incorporated herein by reference.

Claims 1-2, 4-6, and 8-10 are rejected under 35 U.S.C. 102(b) as being anticipated by Reuter (US 5,872,259).

The rejection of the previous office action is maintained in its entirety and incorporated herein by reference.

Claim Rejections - 35 USC § 103

Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over WO '644 as applied above and further in view of Marsh (US 3,141,743).

The rejection of the previous office action is maintained in its entirety and incorporated herein by reference.

Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over US '259 as applied above and further in view of Marsh (US 3,141,743).

The rejection of the previous office action is maintained in its entirety and incorporated herein by reference.

Claims 1-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Davey et al. (Purification of molecular mixtures below the eutectic...) in view of Hurlock et al. (US 4,010,142).

The rejection of the previous office action is maintained in its entirety and incorporated herein by reference.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO

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MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Peter J Lish whose telephone number is 571-272-1354. The examiner can normally be reached on 9:00-6:00 Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Stanley Silverman can be reached on 571-272-1358. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

PL



STUART L. HENDRICKSON
PRIMARY EXAMINER